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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 604

SUSIE V. WATWOOD, *Petitioner,*

v.

REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The orders of the United States Court of Appeals for the District of Columbia Circuit denying the petition for allowance of an appeal, the petition for reconsideration and the petition for reconsideration *en banc* appear in the appendix to petitioner's brief at pp. 6a, 7a.

The opinion of the District of Columbia Court of Appeals is reported at 196 A. 2d 635, and a copy thereof appears

in the appendix to petitioner's brief at p. 1a. The order of the District of Columbia Court of Appeals denying petitioner's motion to modify the court's judgment appears in the appendix to petitioner's brief at p. 7a.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered January 8, 1964 (Petitioner's Appendix, p. 1a). The order of the District of Columbia Court of Appeals denying petitioner's motion to modify the judgment, filed January 20, 1964, was entered January 28, 1964 (Petitioner's Appendix, p. 7a). The petition for allowance of an appeal was filed in the United States Court of Appeals for the District of Columbia Circuit February 6, 1964 (Respondent's Appendix, p. 1). The order of the United States Court of Appeals for the District of Columbia Circuit denying the petition for allowance of an appeal was entered April 8, 1964 (Petitioner's Appendix, p. 6a). The orders of the United States Court of Appeals denying reconsideration and reconsideration *en banc* were entered May 22, 1964 (Petitioner's Appendix, p. 7a).

The petition for a writ of certiorari was filed October 19, 1964, and the jurisdiction of this Court is sought to be invoked under 28 U. S. C. § 1254.

QUESTION PRESENTED

Where the United States Court of Appeals for the District of Columbia Circuit has denied discretionary review of a case arising out of the enforcement of a law of purely local application, absent any showing of egregious error, is this case of the class of cases which this Court will review on writ of certiorari?

COUNTER-STATEMENT OF THE CASE

Following a public hearing as provided in District of Columbia Code, 1961, § 45-1409, respondent, upon a finding

that petitioner had violated Code § 45-1408 (g) and (h),[1] entered an order suspending for a period of 30 days her Real Estate Broker's license.

After review by the District of Columbia Court of Appeals, as permitted by District of Columbia Code, 1961, § 11-772 (e) (9), the order of suspension was, on January 8, 1964, affirmed (Petitioner's Appendix, p. 1a).

More than 10 days after the entry of the judgment of the District of Columbia Court of Appeals, petitioner, on January 20, 1964, filed a motion entitled "Motion to Correct Statement of Fact in Opinion and/or to Modify Judgment" (R. 110). On the ground, among others, that the motion was filed beyond the time permitted by District of Columbia Court of Appeals Rule 27 (p),[2] respondent opposed the motion (R. 117). By order entered January 28, 1964, the District of Columbia Court of Appeals denied the motion (Petitioner's Appendix, p. 7a), and, on February 6, 1964, petitioner filed in the United States Court of Appeals for the District of Columbia Circuit a petition for allowance of an appeal,[3] which was, on April 8, 1964, denied (Respondent's Appendix, p. 1; Petitioner's Appendix p. 6a).

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[1] "The Commission * * * shall have the power to suspend or to revoke any license issued under the provisions of this chapter * * * where the licensee, in performing or attempting to perform any of the acts mentioned herein, has— * * *

"(g) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or other property coming into his possession which belong to others;

"(h) Demonstrated such unworthiness or incompetency to act as a real estate broker or real-estate salesman or a business-chance broker or a business-chance salesman as to endanger the interest of the public * * *."

[2] Such rule provides that: "Motions for rehearing or for modification of the order, opinion, or judgment of this court may be filed within 10 days after the date thereof." January 18, 1964, was neither a Sunday nor a legal holiday.

[3] District of Columbia Code, 1961, §§ 11-321 (b) and 17-103 (Supp. III) provide that: "A party aggrieved by a judgment of the District of Columbia Court of Appeals may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit by petition for the allowance of an appeal," and that such petition shall be filed "* * * within ten days after entry of the judgment from which an appeal is desired."

Thereafter, a petition for reconsideration and a petition for reconsideration *en banc* were denied (Petitioner's Appendix, p. 7a) and, on August 19, 1964, petitioner filed in this Court a petition for a writ of certiorari to review the action of the United States Court of Appeals for the District of Columbia Circuit.

REASON WHY WRIT SHOULD BE DENIED

No case is presented calling for the exercise of this Court's jurisdiction to review on writ of certiorari.

The jurisdiction of the Supreme Court to review on writ of certiorari is clearly defined by 28 U. S. C. § 1254, which provides in pertinent part that:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * *."

Inasmuch as the United States Court of Appeals denied the petition to it for allowance of an appeal from the judgment of the District of Columbia Court of Appeals, it is quite apparent that this case was never *in* a court of appeals for purposes of review on writ of certiorari under 28 U.S.C. § 1254, *supra*. See *Ferguson* v. *District of Columbia*, 270 U. S. 633, 46 S. Ct. 355, 70 L. Ed. 771, where a petition for a writ of certiorari to review the order of the Court of Appeals of the District of Columbia (now the United States Court of Appeals for the District of Columbia Circuit) denying a writ of error to the Police Court of the District of Columbia was denied by the Supreme Court for want of jurisdiction under § 240 of the Judicial Code, as amended by the Act of February 13, 1925, Chap. 229, § 1 (a), 43 Stat. 938 (now 28 U. S. C. § 1254).

But even if this case can be considered a case in the court of appeals within the purview of 28 U. S. C. § 1254, *supra*, it is crystal clear from the record that the court below was without jurisdiction to review it since the petition for allowance of an appeal was filed beyond the time permitted by District of Columbia Code, 1961, § 17-103 (Supp. III), *supra*. And because the requirements of such section are mandatory and jurisdictional petitioner could not, by filing out of the time prescribed by District of Columbia Court of Appeals Rule 27 (p), *supra*, a "Motion to Correct Statement of Fact in Opinion and/or to Modify Judgment," cause to commence to run again the time within which to petition the United States Court of Appeals for allowance of an appeal. See *McIntosh* v. *United States*, 70 F. 2d 507 (4th Cir.). See also and compare *United States* v. *Robinson, et al.*, 361 U. S. 220, 80 S. Ct. 282, 4 L. Ed. 2d 259; *Allegrucci* v. *United States*, 372 U. S. 954, 83 S. Ct. 950, 9 L. Ed. 2d 978.

Manifestly, no more is involved in the instant case than a controversy arising out of the enforcement of a law of purely local application and significance. Under such circumstances, absent a clear showing of egregious error, and here there is no such showing, this Court has consistently refused to exercise its jurisdiction. See *American Security and Trust Co.* v. *District of Columbia*, 224 U. S. 491, 32 S. Ct. 553, 56 L. Ed. 856; *Del Vecchio* v. *Bowers*, 296 U. S. 285, 56 S. Ct. 190, 80 L. Ed. 229; *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140, 35 S. Ct. 828, 59 L. Ed. 1238; *Griffith* v. *United States*, 336 U. S. 704, 718, 69 S. Ct. 814, 93 L. Ed. 993, rehear. den. 337 U. S. 921, 69 S. Ct. 1152, 93 L. Ed. 1730; *Fisher* v. *United States*, 328 U. S. 463, 66 S. Ct. 1318, 90 L. Ed. 1382, 166 A. L. R. 1176.

What, therefore, is abundantly clear is that no question of substance is presented which falls within the ambit of Rule 19 (b) of the Rules of this Court.

Without any basis in the record or in logic, petitioner has sought to inject in the case constitutional questions, but as this Court said in *United Surety Co.* v. *American Fruit Product Co., supra,* at 238 U. S. 142:

> "* * * The constitutional point is a mere pretext put forward in order to open other questions that otherwise could not come here. * * *"

CONCLUSION

For these reasons and others apparent in the record, it is respectfully submitted that petitioner has failed utterly to demonstrate a right to review by this Court on writ of certiorari. The petition should, therefore, be denied.

Respectfully submitted,

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APPENDIX

[Filed February 6, 1964]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSIE V. WATWOOD, *Petitioner* v. REAL ESTATE COMMISSION OF THE DISTRICT OF COLUMBIA, *Respondent.*	No. 18,412

PETITION FOR ALLOWANCE OF AN APPEAL

Petition is hereby made by Susie V. Watwood for allowance of an appeal from the judgment of the District of Columbia Court of Appeals entered on the 8th day of January, 1964, Motion to Correct Statement of Fact in Opinion and/or to Modify Judgment Accordingly denied January 28, 1964, in a cause entitled *Susie V. Watwood* v. *Real Estate Commission of the District of Columbia,* No. 3351, in said District of Columbia Court of Appeals, in favor of Real Estate Commission of the District of Columbia against said Susie V. Watwood.

* * * * *